IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE THIRD DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

-

WRIT PETITION No.10349 of 2004

Between:

Aided Upper Primary School, rep. by its Correspondent

Y. Visweswara Rao, S/o. Late Krishna Murthy, aged 60 years,
R/o. Ichapuram, Srikakulam District.

..... PETITIONER

AND

1 The Government of A.P., rep. by its Principal Secretary,
Education Department, Secretariat, Hyderabad.
2 The Commissioner & Director of School Education, A.P.,

Nampally, Hyderabad.
3 The District Educational Officer, Srikakulam District, Srikakulam.

4 D. Sankara Rao, S/o. Vallaiah, aged 43 years,

5 S. Krishna Murthy, S/o. Suryanarayana, aged 43 years,

6 V. Ramavatharam, S/o. Krishna Das, aged 43 years,

7 B. Delhi Rao, S/o. Muttaiah, aged 43 years,

8 K. Balaiah Reddy, S/o. Madaiah, aged 48 years,

9 G. Lakshmi Narayana, S/o. Jagannadham, aged 44 years,

10 S. Narasimha Murthy, S/o. Neelakantam, aged 43 years,

11 K. Ramaswamy, S/o Simhadri, aged 40 years,

12 D. Lakshmi Prakash, S/o. Uday Bhaskar, aged 38 years,

(Respondents 4 to 12 are S.G. Assistants, working in A.U.P. School,

Itchapuram, Srikakulam District)

(R4 to R12 are impleaded as per Court order dated 03.11.2004 in

WPMP No.19322 of 2004)

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of writ of mandamus declaring the Government Memo No.16982/P.S.3/2003 Dt.27.4.2004 issued by the 1st respondent as illegal, arbitrary and in violation of principles of natural justice and consequently set aside the memo no.16982/P.S.3/2003 dt.27.4.2004.

Counsel for the Petitioner: MR.SRINIVAS DAMMALAPATI

Counsel for the Respondent Nos.1 to 3: GP FOR SCHOOL EDUCATION

Counsel for the Respondent Nos.4 to 12: MR. G.V. SHIVAJI

The Court made the following:

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.10349 OF 2004

ORDER:

Aided Upper Primary School, Ichapuram, impugns the Government Memo No.16982/P.S.3/2003, dt.27.4.2004 whereby and whereunder the Government of Andhra Pradesh, first respondent herein, accorded permission to second respondent for shifting of all the aided teaching posts with provision and persons working in petitioner school to other needy schools to the management of Mandal Parishad/Municipal Management. As a consequence thereof, third respondent herein by proceedings Rc.No.1178/A3/2003(I), dt.24.5.2004 requested the Mandal Educational Officers in the District to furnish particulars of additional teacher posts required to the needy schools as per 1 : 40 teacher pupil ratio for effecting the transfer of posts with persons working in petitioner school.

This Court ordered *Rule nisi* on 23.6.2004. On the same day, by order made in W.P.M.P.No.13138 of 2004 while suspending the proceedings of third respondent dt.24.5.2004 directed the petitioner to surrender seven teacher posts to the District Educational Officer, (DEO) Srikakulam, to enable him to accommodate teachers in other schools. As many as nine secondary grade teachers in the petitioner school filed W.P.M.P.No.19322 of 2004 for impleadment and W.V.M.P.(SR) No.80624 of 2004 for vacating the interim order passed by this Court. The matter was heard finally at interlocutory stage.

The case of the petitioner in brief is as follows. The school was established in 1926 in a building adjacent to Jagannadha Swamy Temple, at National Highway. In 2001, Endowments Department claimed the building and seized the building on 30.1.2001 instructing the petitioner to take away the school. The management of the school could not procure proper accommodation and therefore requested the municipal authorities, Ichapuram, to run the school in any of the building owned by the Municipality. Ichapuram Municipality permitted the management to run the school in the premises of Upper Primary School. But, in 2003 petitioner was asked to vacate the premises on the ground that it would cause inconvenience to the Upper Primary School. As proper accommodation could not be obtained, the school was shifted to a residential premises owned by the Correspondent and started running school in three rooms. Due to these frequent changes, students strength came down from 600 to 300. As there is no sufficient strength petitioner requested

the third respondent to approve and surrender seven aided teachers and transfer them to any other needy schools under the management of Mandal Parishad/Ichapuram Municipality. Accordingly, third respondent initiated proposals and sent a communication dt.5.6.2003 to second respondent for permission to surrender seven teachers. When no proper proceedings were issued, petitioner filed Writ Petition No.16033 of 2003 seeking directions from this Court. By order dt.14.8.2003 this Court disposed of the Writ Petition directing the respondents to examine the proposals forwarded by the DEO and take appropriate decision in the matter. Ultimately, first respondent issued impugned Memo according permission for shifting all aided teacher posts to needy Mandal Parishad/Municipal Schools.

There are sixteen aided teacher posts and when petitioner requested the approval for surrender of seven posts, the action of the respondents in permitting shifting of all the posts is arbitrary and amounts to withdrawal of recognition and withdrawal of aided posts. Even third respondent while sending proposals on 5.6.2003 sought permission for shifting only seven teachers having regard to the strength of the school which stands at 458. Therefore, the action of first respondent in issuing impugned order is arbitrary and irrational.

In the counter affidavit filed on behalf of respondents 4 to 12, who are the secondary teachers working in aided posts it is stated that there is no accommodation for running the school and Ichapuram Municipal Council also passed resolution for taking over management of the school. Petitioner school sought permission for surrendering seven posts of secondary grade teachers out of sixteen aided posts for continuation of remaining aided posts though there is no pupil strength in the school requiring continuation of these posts. It is further stated that after petitioner submitted proposals for surrendering seven posts, third respondent conducted enquiry and submitted a report on 9.8.2003. In the said report, third respondent informed that petitioner is not in a position to maintain school, that there is no accommodation at all and that all the teachers may be adjusted in Mandal Parishad/Municipal Schools as per the provisions of the A.P.Education Act, 1982 (for short, the Act). Even before proper authority could go into this question as directed by first respondent, petitioner approached this Court and obtained interim orders. The Writ Petition is not *bona fide* and that the decision was taken by the Government in the interest of pupils as well as administration of the school. After April 2003, as the total strength of the school is only fourteen boys and ten girls and therefore, petitioner cannot be allowed to run school for the sake of retaining aided posts. Respondents 4 to 12 also alleged that Sri Y.Visveswara Rao, who filed the Writ Petition claiming himself to be Correspondent, was never appointed as Correspondent of the School and he has no *locus standi* to file Writ Petition. Sri Y.Srinivasa Rao, who was Correspondent, expired on 25.5.2003 and thereafter no Correspondent was appointed. Sri Visveswara Rao earlier worked as Head Master of the School and he cannot question the proceedings of first respondent. The petitioner has not filed any reply affidavit denying the various allegations and averments made in the affidavit filed on behalf of respondents 4 to 12. Nor any material is placed before this Court in proof of the allegation that there is sufficient strength in the petitioner school.

Sri B.Srinivas, learned Advocate, representing Sri Dhammalapati Srinivas, learned counsel for the petitioner, submits that it was improper on the part of the first respondent to accord permission for shifting of all aided teaching posts when petitioner asked for accepting surrender of only seven aided posts. He would also urge that if all the posts are shifted from petitioner school the same would amount to withdrawal of recognition and in the absence of any prior notice, as required under Section 21(3) of the Act, the same would violate the principles of natural justice. The learned counsel also relies on Section 46 of the Act in support of the contention that before any grant payable to an educational institution is withdrawn, the Manager of the institution has to be given an opportunity of making representation against such withdrawal, rejection or withdrawal of grant.

Per contra, learned Assistant Government Pleader for School Education and learned counsel for respondents 4 to 12 contend that Writ Petition is premature and even before proper exercise is made by the District authorities, petitioner has approached this Court in haste.

The impugned Memo dt.27.4.2004 reads as under.

In the circumstances reported by the Commissioner and Director of School Education, Hyderabad, in the reference 1st, 3rd and 5th cited, Government after careful consideration of the matter hereby accord permission to the Commissioner and Director of School Education, Hyderabad for shifting of all the aided teaching posts with provision and persons working in Aided Upper Primary School, Ichapuram, Srikakulam District to other needy schools under the management of Mandal Parishad/Municipal Management keeping in view the over all position of the district, in exercise of the powers conferred under sub-rule (10 of Rule 17 of G.O.Ms.No.1, Education (PS-2_ Department, dated 1.1.1994, by constituting a Committee consisting of District Collector, Srikakulam District, Chief Executive Officer, Srikakulam District and the District Educational Officer, Srikakulam District, duly instructing the existing management to run the school without aid and the District Educational Officer, Srikakulam District to accommodate the children in the nearby schools, in the interest of the children.

The Commissioner and Director of School Education, Hyderabad/District Educational Officer, Srikakulam district is requested to take necessary further action accordingly.

A reading of the above would show that though the Government permitted to shift all the aided teacher posts with provision and persons working in petitioner school, the same cannot be said to be final. The Government directed the second respondent to constitute Committee consisting of District Collector, Srikakulam, Chief Executive Officer, Zilla Parishad, Srikakulam and District Educational officer, Srikakulam to look into the exercise of shifting the teachers. The impugned order clearly shows that management of the petitioner school be instructed to run school without aid and the DEO was directed to accommodate children in the nearby schools. The impugned order or the consequential order issued by the DEO do not amount to withdrawal of recognition or closure of the school. Even according to the petitioner due to various reasons at least from 2001 the school is facing problems

regarding accommodation. Therefore the management itself requested to accept surrender of seven teachers. The matter was enquired into. DEO submitted a report based on which a report was sent by second respondent seeking permission to shift all the aided teachers. These facts become clear by referring to impugned order wherein the Government refers to various communications from the Commissioner in this regard. Be that as it is, though a specific allegation is made by respondents 4 to 12, that the strength of the petitioner school after April, 2004 has dwindled to fourteen (14) boys and ten (10) girls, petitioner has not chosen to file reply affidavit denying the same. In these circumstances, the action of first respondent in issuing impugned G.O. cannot be termed as arbitrary or illegal. It is always open to the petitioner school to approach the respondents for posting aided teachers as and when strength of the school increases and as and when petitioner is able to procure permanent accommodation. When the petitioner has no permanent accommodation and when pupil strength has been reduced to negligible figures, it would not be proper for the Government to continue all the aided posts in the school. If the petitioner has any grievance on the strength of the allegation that the petitioner school has sufficient strength, liberty is given to petitioner school to approach the third respondent with proper representation. As and when such representation is made, the DEO shall enquire into the matter and submit a report before the Committee constituted pursuant to impugned Memo of the Government so that appropriate decision can be taken by the Committee itself. In this Writ Petition, however, no relief can be granted.

The Writ Petition, for the above reasons, subject to above observations, is accordingly dismissed. No costs.

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(V.V.S.RAO, J)

3.11.2004

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To

1 The Principal Secretary, Education Department,

Government of Andhra Pradesh, Secretariat, Hyderabad.
2 The Commissioner & Director of School Education, A.P.,

Nampally, Hyderabad.
3 The District Educational Officer, Srikakulam District, Srikakulam.

4 Two CCs to the Government Pleader for School Education,

High Court Buildings, Hyderabad (O.U.T)

5 Two C.D. Copies.